

MONTANA LEGISLATIVE HISTORY

Chapter 110 19 99

Bill H _____ S 201 Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 3/5 ✓ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 1/19 ✓ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SB 201 Introduced by McNutt, et al. *LC1499 Drafter: Petesch*

Clarify That in a Criminal Prosecution, Jeopardy Attaches When a Jury Is Empaneled and Sworn;...

By Request of Senate Judiciary Standing Committee

1/13	Introduced and 1st Reading		
1/13	Referred to Judiciary		
1/19	Hearing		
1/19	Committee Executive Action--Bill Passed	9	0
1/19	Committee Report--Bill Passed		
1/20	2nd Reading Passed	50	0
1/21	3rd Reading Passed	49	0

	Transmitted to House		
2/16	Referred to Judiciary		
3/05	Hearing		
3/05	Committee Executive Action--Bill Concurred	12	0
3/06	Committee Report--Bill Concurred		
3/09	2nd Reading Concurred	91	8
3/10	3rd Reading Concurred	91	8

	Returned to Senate		
3/11	Sent to Enrolling		
3/11	Returned from Enrolling		
3/12	Signed by President		
3/13	Signed by Speaker		
3/15	Transmitted to Governor		
3/18	Signed by Governor		
3/19	Chapter Number Assigned		
	Chapter Number 110		
	Effective Date: 10/01/1999 - All Sections		

SB 202 Introduced by Bartlett, et al. *LC0583 Drafter: McClure*

Establish a Work Period in Lieu of a Work Week for Employees in the Construction Industry;...

1/14	Introduced and 1st Reading		
1/14	Referred to Labor and Employment Relations		
1/26	Hearing		
2/10	Tabled in Committee		
3/01	Missed Deadline for General Bill Transmittal		

SB 203 Introduced by Bartlett, et al. *LC0584 Drafter: Petesch*

Revise Laws Governing Execution of Judgment;...

1/14	Introduced and 1st Reading		
1/14	Referred to Judiciary		
1/26	Hearing		
2/01	Committee Executive Action--Bill Passed	9	0
2/01	Committee Report--Bill Passed		
2/04	2nd Reading Passed	50	0
2/05	3rd Reading Passed	49	0

Transmitted to House

2/16	Referred to Judiciary		
3/02	Hearing		
3/02	Committee Executive Action--Bill Concurred	19	0
3/03	Committee Report--Bill Concurred		
3/08	2nd Reading Concurred	99	1
3/09	3rd Reading Concurred	98	2

	Returned to Senate		
3/10	Sent to Enrolling		
3/10	Returned from Enrolling		
3/12	Signed by President		
3/13	Signed by Speaker		
3/15	Transmitted to Governor		
3/16	Signed by Governor		
3/17	Chapter Number Assigned		
	Chapter Number 89		
	Effective Date: 3/16/1999 - All Sections		

SB 204 Introduced by Keating, et al. *LC0009 Drafter: C. Erickson*

Authorize the Establishment of Charter Schools as a Means of Providing Additional Educational Opportunities to the Children of Montana;...

1/14	Introduced and 1st Reading		
1/14	Referred to Education and Cultural Resources		
1/14	Fiscal Note Requested		
1/22	Fiscal Note Received		
1/22	Fiscal Note Signed		
1/22	Fiscal Note Printed		
1/25	Revised Fiscal Note Requested		
1/25	Revised Fiscal Note Signed		
1/26	Revised Fiscal Note Printed		
2/01	Hearing		
2/08	Tabled in Committee		
2/17	Taken from Table in Committee		
2/19	Tabled in Committee		
3/01	Missed Deadline for General Bill Transmittal		

SB 205 Introduced by McNutt, et al. *LC0309 Drafter: Higgins*

Increase the Aviation Gasoline License Tax from 3 Cents to 4 Cents a Gallon;...

10/08	Fiscal Note Needed		
1/14	Introduced and 1st Reading		
1/14	Referred to Taxation		
1/14	Fiscal Note Requested		
1/18	Fiscal Note Received		
1/18	Fiscal Note Signed		
1/19	Fiscal Note Printed		
1/25	Hearing		
1/30	Committee Executive Action--Bill Passed	9	0
1/30	Committee Report--Bill Passed		
2/02	2nd Reading Passed as Amended	50	0
2/03	3rd Reading Passed	48	1

	Transmitted to House		
2/16	Referred to Taxation		
3/04	Hearing		

SENATE

BILL NO. 201

INTRODUCED BY

(Primary Sponsor)

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT IN A CRIMINAL PROSECUTION, JEOPARDY ATTACHES WHEN A JURY IS EMPANELED AND SWORN; AND AMENDING SECTION 46-11-503, MCA."

WHEREAS, in *Keating v. Sherlock*, 278 Mont. 218, 924 P.2d 1297, 53 St. Rep. 855 (1996), the Montana Supreme Court held that section 46-11-503(1)(d)(i), MCA, has been unconstitutional since the decision in *Crist v. Bretz*, 437 U.S. 28 (1978).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-11-503, MCA, is amended to read:

"46-11-503. Prosecution based on same transaction barred by former prosecution. (1) When two or more offenses are known to the prosecutor, are supported by probable cause, and are consummated prior to the original charge and jurisdiction and venue of the offenses lie in a single court, a prosecution is barred if:

(a) the former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense that is subsequently set aside is an acquittal of the greater offense that was charged.

(b) the former prosecution resulted in a conviction that has not been set aside, reversed, or vacated;

(c) after a charge had been filed, the prosecution was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated; or

(d) the former prosecution was terminated for reasons not amounting to an acquittal and takes place:

(i) in a jury trial, ~~after the first witness is sworn but before a verdict is returned~~ when the jury is

1 empaneled and sworn; or

2 (ii) in a nonjury trial, after the first witness is sworn but before a judgment as to guilt or innocence
3 is reached.

4 (2) A prosecution based upon the same transaction as a former prosecution is not barred under
5 subsection (1)(d) when:

6 (a) the defendant consents to the termination or waives ~~his~~ the right to object to the termination
7 or

8 (b) the trial court finds that the termination is necessary because:

9 (i) it is physically impossible to proceed with the trial in conformity with law;

10 (ii) there is a legal defect in the proceedings that would make any judgment entered upon a verdict
11 reversible as a matter of law;

12 (iii) prejudicial conduct makes it impossible to proceed with the trial without manifest injustice to
13 either the defendant or the state;

14 (iv) the jury is unable to agree upon a verdict; or

15 (v) false statements of a juror on voir dire prevent a fair trial."

16 - END -

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

**SENATE
JUDICIARY**

CHAIR: Grosfield, Lorents **VICE CHAIR:** Bishop, Al

MEMBERS:

Bartlett, Sue	Doherty, Steve
Grimes, Duane	Halligan, Mike
Holden, Ric	Jabs, Reiny
McNutt, Walter	

SECRETARY: Croucher, Delila

Keintz, Judy

LEGISLATIVE STAFF:

Lane, Valencia

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

-
- SB 186** **SPONSOR:** Wells, Jack **SHORT TITLE:** Revise the places inside of which a concealed weapon may not be carried
 REFERRED ON: 01/11/1999 **HEARD ON:** 01/18/1999
 EXECUTIVE ACTION: 02/05/1999 Bill Passed as Amended -- VOTE: 7 - 2
 TABLED ON: 01/22/1999
 FINAL DISPOSITION 05/07/1999 Chapter Number Assigned
-
- SB 188** **SPONSOR:** Beck, Tom **SHORT TITLE:** Clarify in criminal laws that "in state prison" means "in official detention"
 REFERRED ON: 01/12/1999 **HEARD ON:** 01/21/1999
 EXECUTIVE ACTION: 01/21/1999 Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION 03/23/1999 Chapter Number Assigned
-
- SB 190** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Clarify jury trial in misdemeanor cases
 BY REQUEST OF: (S) Judiciary Standing Committee
 REFERRED ON: 01/13/1999 **HEARD ON:** 01/19/1999
 EXECUTIVE ACTION: 01/19/1999 Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION 04/20/1999 Chapter Number Assigned
-
- SB 191** **SPONSOR:** Jabs, Reiny **SHORT TITLE:** Clarify statute of limitations for action on judgment or decree
 BY REQUEST OF: (S) Judiciary Standing Committee
 REFERRED ON: 01/13/1999 **HEARD ON:** 01/19/1999
 EXECUTIVE ACTION: 01/19/1999 Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
-
- SB 198** **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Require inmate discharge on first day of month
 REFERRED ON: 01/13/1999 **HEARD ON:** 01/21/1999 (S) Discussed in Committee ON: 02/19/1999
 TABLED ON: 01/29/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 201** **SPONSOR:** McNutt, Walter **SHORT TITLE:** Clarify when criminal jeopardy attaches
 BY REQUEST OF: (S) Judiciary Standing Committee
 REFERRED ON: 01/13/1999 **HEARD ON:** 01/19/1999
 EXECUTIVE ACTION: 01/19/1999 Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
-

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 19, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 155, SB 190, SB 191, SB 201, 1/17/1999
Executive Action: SB 190, SB 191, SB 201, SB 33, SB 152

HEARING ON SB 155

Sponsor: SEN. DALE BERRY, SD 30, Hamilton

Proponents: Zane Sullivan, Montana Association of Realtors
Rod Wilson, Montana Association of Realtors
Steven Mandeville, Real Estate Licensee

Opponents: Al Smith, Montana Trial Lawyers Association

a judgment. Rule 23(b) of the Montana Justice and City Court Rules of Civil Procedure incorporates a six year limit by reference. On page 1, line 17, this bill amends Section 27-2-201 to make the five year period for commencement of an action in Justice and City Courts agree with the six year time period contained in the other sections. This bill makes Section 27 coincide with other sections of the codes.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Greg Petesch, Code Commissioner, maintained that this legislation simply resolves a statutory conflict on the time for executing on a judgment that was rendered in a court of limited jurisdiction. This problem was brought to his attention by the Justice of the Peace from Yellowstone County. Since the Supreme Court used the six year statute, it seems most appropriate to amend this statute to coincide.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. JABS closed on SB 191.

HEARING ON SB 201

SEN. WALTER MCNUTT, SD 50, Sidney, introduced SB 201, which is legislation requested by the Code Commissioner. This bill is to clarify when jeopardy occurs in a trial.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Greg Petesch, Code Commissioner, explained that this statute has been invalid since 1978 in terms of when jeopardy attaches in a criminal trial for purposes of determining multiple prosecutions for the same offense. In 1978, the U.S. Supreme Court held that Montana's statute, which has remained on the books and unchanged, was in violation of the federal double jeopardy provision. The Court pointed out in a case decided in 1998 that the legislature has not addressed that statute. This issue arose again in

Keating v. Sherlock. This bill will clarify the statute so that jeopardy attaches when the jury panel is sworn.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. MCNUTT closed on SB 201.

{Tape : 1; Side : B; Approx. Time Counter : 10.02}

EXECUTIVE ACTION ON SB 190

Motion/Vote: SEN. DOHERTY MOVED THAT SB 190 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 191

Motion/Vote: SEN. DOHERTY MOVED THAT SB 191 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 201

Motion/Vote: SEN. DOHERTY MOVED THAT SB 201 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 33

Ms. Lane explained that the amendments SB003304.avl EXHIBIT(3) have been agreed to by the Department of Corrections. The bill as originally drafted put in a definition of regional correctional facility that it did not include a private prison licensed by the department. The reason they wanted the language is because they did want private prisons that may run a regional correctional facility to be licensed by the department. This was in direct conflict with existing language in the code that stated that private correctional facilities can include a regional correctional facility. The intent was that they wanted the bill to state that a regional correctional facility, if it is run by a private entity, would have to be licensed and authorized by the Department of Corrections. The amendments amend the definition of regional correctional facilities and the laws relating to regional correctional facilities to make it very clear that if a regional correctional facility is run, owned, or operated by a private entity they need to have the construction approved and the operation has to be licensed by the Department of Corrections.

Motion: SEN. HOLDEN MOVED TO AMEND SB 33.

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

**HOUSE
JUDICIARY**

CHAIR: Clark, Robert

VICE CHAIR: McGee, Dan
Wyatt, Diana

MEMBERS:

Ahner, Chris

Anderson, Shiell

Clark, Paul

Curtiss, Aubyn

Eggers, Bill

Facey, Tom

Gallus, Steven

Gutsche, Gail

Hurdle, Joan

Jore, Rick

Kitzenberg, Sam

Molnar, Brad

Noennig, Mark

Shockley, Jim

Soft, Loren

Williams, Carol

Younkin, Cindy

SECRETARY: Schindler, Pam

LEGISLATIVE STAFF: MacMaster, John

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

-
- SB 190** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Clarify jury trial in misdemeanor cases
 BY REQUEST OF: (S) Judiciary Standing Committee
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/10/1999
 EXECUTIVE ACTION: 03/18/1999 Bill Concurred -- **VOTE:** 17 - 0
 FINAL DISPOSITION 04/20/1999 Chapter Number Assigned
-
- SB 191** **SPONSOR:** Jabs, Reiny **SHORT TITLE:** Clarify statute of limitations for action on judgment or decree
 BY REQUEST OF: (S) Judiciary Standing Committee
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/05/1999
 EXECUTIVE ACTION: 03/05/1999 Bill Concurred -- **VOTE:** 12 - 0
 FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
-
- SB 198** **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Require inmate discharge on first day of month
 REFERRED ON: 03/10/1999 **HEARD ON:** 03/18/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 201** **SPONSOR:** McNutt, Walter **SHORT TITLE:** Clarify when criminal jeopardy attaches
 BY REQUEST OF: (S) Judiciary Standing Committee
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/05/1999
 EXECUTIVE ACTION: 03/05/1999 Bill Concurred -- **VOTE:** 12 - 0
 FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
-
- SB 203** **SPONSOR:** Bartlett, Sue **SHORT TITLE:** Revise laws governing execution of judgment
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/02/1999
 EXECUTIVE ACTION: 03/02/1999 Bill Concurred -- **VOTE:** 19 - 0
 FINAL DISPOSITION 03/17/1999 Chapter Number Assigned
-
- SB 213** **SPONSOR:** Grosfield, Lorents **SHORT TITLE:** Sentence enhancement for discriminatory crimes
 REFERRED ON: 01/30/1999 **HEARD ON:** 02/04/1999
 TABLED ON: 02/11/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on March 5, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Chris Ahner (R)

Members Absent: Rep. Carol Williams (D)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 186, SB 188, SB 201, SB 191, 2/18/1999

Executive Action: SB 191-Be Concurred In, SB 201-Be Concurred In, SB 188-

Be Concurred in; SB 60-Be
Concurred in as Amended, SB
214-Be Concurred in as Amended

HEARING ON SB 186

Sponsor:

Senator Wells presented SB 186.

{Tape : 1; Side : A; Approx. Time Counter : 30 - 204}

Proponents:

Gary Marbut, Montana Shooting Sports Association

{Tape : 1; Side : A; Approx. Time Counter : 204 - 345}

Bud Elwell, NWACA

{Tape : 1; Side : A; Approx. Time Counter : 345 - 394}

Harry Hollingsworth, Deputy Sheriff-Brady, MT.

{Tape : 1; Side : A; Approx. Time Counter : 394 - 463}

Opponents:

Betty Waddell, Montana Association of Churches

{Tape : 1; Side : A; Approx. Time Counter : 463 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 15}

EXHIBIT(1)

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 15 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 54}

Closing by Sponsor:

Senator Wells made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 54 - 118}

HEARING ON SB 188

Sponsor:

Senator Beck presented SB 188.

{Tape : 2; Side : A; Approx. Time Counter : 118 - 147}

Proponents:

John Connor, Dept of Justice, Montana County Attorneys Assoc.

{Tape : 2; Side : A; Approx. Time Counter : 147 - 247}

Marty Lambert, Gallatin County Attorney

{Tape : 2; Side : A; Approx. Time Counter : 247 - 278}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 278 - 460}

Closing by Sponsor:

Senator Beck made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 460 - 550}

HEARING ON SB 201

Sponsor:

Senator McNutt presented SB 201.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 10}

Proponents:

Greg Petesch, Code Commissioner

{Tape : 2; Side : B; Approx. Time Counter : 10 - 53}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

Senator McNutt made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 53 - 66}

HEARING ON SB 191

Sponsor:

Senator Jabs presented SB 191.

{Tape : 2; Side : B; Approx. Time Counter : 66 - 88}

Proponents:

Greg Petesch, Code Commissioner

{Tape : 2; Side : B; Approx. Time Counter : 88 - 104}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 104 - 121}

Closing by Sponsor:

Senator Jabs made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 121 - 131}

EXECUTIVE ACTION ON SB 191

Motion/Vote: REP. YOUNKIN moved that SB 191 BE CONCURRED IN.

Motion carried 12-0.

(Rep. Ahner, Eggers, Gallus, Gutsche, Kitzenberg, Molnar, Soft Williams absent during vote)

{Tape : 2; Side : B; Approx. Time Counter : 131 - 999}

EXECUTIVE ACTION ON SB 201